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No. 88–1597

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THE BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS, et al.,
Petitioners

v.

BRIDGET C. MERGENS, et al.,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF AMICI CURIAE SPECIALTY RESEARCH ASSOCIATES, INC. SAVE AMERICA'S YOUTH, INC. IN SUPPORT OF RESPONDENTS

THOMAS PATRICK MONAGHAN
(Counsel of Record)
6375 New Hope Road
New Hope, Kentucky 40052
(502) 549-5454

Lex Publishing Company, 2161 Monroe Drive, P.O. Box 13764, Atlanta, GA 30324

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On Appeal from the United States Court of Appeals for the Eighth Circuit

BRIEF OF AMICI CURIAE
SPECIALTY RESEARCH ASSOCIATES, INC.
SAVE AMERICA'S YOUTH, INC.
IN SUPPORT OF RESPONDENT

INTEREST OF THE AMICI

Specialty Research Associates, Inc., is a research group based in Aledo, Texas, which researches in two primary spheres: (1) the investigation of public policies concerning public education, particularly as those policies may relate to what is termed "traditional values," and any effects that those policies might have on education or on students; (2) historical research investigating incidents or previous public policy positions which might have direct application to problem areas today.

The amici file brief to assist the Court in the present case, believing that the Court's consideration of the Equal Access Act should be accompanied by an understanding of the impact that its decision will have on America's youth. The amicus offers information which shows a direct correlation between the access of students to support groups and teachings which

can provide traditional values and the effect those teachings have on schools and on students, collectively and individually.

Save America's Youth, Inc., is a non-profit educational and public policy organization headquartered in Washington, D.C. It is devoted to issues concerning teenagers and the problems they face in America today. It approaches these issues from a perspective grounded in a commitment to traditional moral values. It believes that the fundamental liberty of religious exercises is essential for young people and that measures like the Equal Access Act, which guarantee this liberty, contribute to their successful growth and development. The Constitution ensures, rather than prohibits, this liberty.

SUMMARY OF THE ARGUMENT

This case investigates the question of whether the Equal Access Act is a constitutional act and whether it can be permissible for religious clubs to congregate during non-instructional time in the same manner in which non-religious clubs gather. No sound education goal is served by exposing students to non-religious aspects of society and not allowing them equal opportunity to choose to be exposed to the religious aspects of society and to the important societal consequences arising from religion.

The Court's ruling in this case should be preceded by an honest assessment of the measurable consequences to students which have occurred since their access to religious principles was severely restricted. This Court's unclear and varying positions on religion in public arenas have allowed many lower courts to aggressively pursue policies hostile to religion, allowing no accommodation for any type of activity which even remotely purports to be religious, no matter how non-sectarian or voluntary its nature may be.

It has been long recognized and openly acknowledged, not only by this Court through many previous decisions, but also by leading historians, philosophers, and educators, that religious principles are the moral basis for this nation and that without that moral basis this nation cannot long remain atop its problems. In 1962-63, this Court first placed severe restrictions on the access of students to any voluntary exposure to the basic religious principles recognized as the

source of morality. Since that time, this nation has become the world's leader in numerous unenviable categories related to student morality (e.g., teenage pregnancies, STDs, sexual activity, etc.). Graphs are presented to document the abrupt changes in the patterns of student morality which began when student access to religious principles was dramatically restricted through the unprecedented rulings in 1962-1963.

This Court has often stated that neither religion nor non-religion could be given preference above the other. Only by upholding the Equal Access Act can the Court be consistent with its previous declarations. To overturn the Equal Access Act will be to establish non-religion in preference to religion and will be to clone students into an educational system which endorses non-religion as the only philosophical approach to life available for students. Such a system would violate the stand of this Court which has maintained that students are not "mere creatures of the State."

ARGUMENT:

I. THIS COURT'S PROHIBITING ACCESS BY STUDENTS TO RELIGIOUS PRINCIPLES WAS A RADICAL CHANGE IN ITS JURISPRUDENCE

A. States Regularly Encouraged Religious Activities as Part of Public Education Long After Ratification of the Fourteenth Amendment

For decades following the passage of the Fourteenth Amendment in 1868, religious activities had either been indirectly permitted or directly encouraged as part of public education in America, as evidenced by the laws of most of the states. The following examples illustrate laws typical of those in most states, laws passed nearly six decades *after* the Fourteenth Amendment, laws which were upheld as constitutional:

> FLORIDA--Whereas, it is in the interest of good moral training, of a life of honorable thought and good citizen-

ship, that the public school children should have lessons of morality brought to their attention during their school days, therefore, Be it Enacted by the Legislature of the State of Florida:
Section 1. That all schools in this state that are supported in whole or in part by public funds, be, and the same are, hereby required to have once every school day reading in the presence of the pupils from the Holy Bible, without sectarian comment. [1]

DELAWARE--Section 2. In each public school classroom of the state, and in the presence of the scholars therein assembled, at least five verses from the Holy Bible shall be read at the opening of such school...[2]

IDAHO--Section 2. That teachers...shall...read, without comment or interpretation, from twelve to twenty verses from...the Bible...[3]

In 1963 in *Abington v. Schempp*, this Court changed its application of the Fourteenth Amendment, reversed its position, and declared these laws no longer to be constitutional. The law challenged in 1963 was substantially identical to those previously upheld:

> At least ten verses from the Holy Bible shall be read, without comment....Participation in the opening exercises...is voluntary....There are no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations given at or during the exercises. [4]

1. C. Lischka, *Private Schools and State Laws* 275-76 (1925), quoting *Florida Laws Relating to Education.*
2. *Id.*, quoting *School Laws of Delaware, 1925* 65-66.
3. *Id.*, quoting *Idaho Session Laws, 1925* Chapter 35 at 48-9.
4. *School Dist. of Abington Twp.v. Schempp*, 374 U.S. 203, 205, 207 (1963).

This Court acknowledged that the application of the Fourteenth Amendment to the Establishment Clause was something of recent origin, something which did not occur until 79 years ***after*** the ratification of the Fourteenth Amendment

> The Establishment Clause was not incorporated in the Fourteenth Amendment until *Everson v. Board of Education* was decided in 1947....The meaning of the Establishment Clause and the Free Exercise Clause [has been] made applicable to the States for only a few decades at best. [5]

In *McCullom v. Board of Education,* the Court explained why it had waited 79 years to apply the Fourteenth Amendment against these previously constitutional state laws. It presented accounts from the Congress which originally passed the Fourteenth Amendment, showing what had happened to attempts to join the Fourteenth Amendment to the Establishment Clause through the Blaine Amendment, which had stated:

> No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof...No public property, and no public revenue...shall be appropriated to...the support of any school...under the control of any religious or anti-religious sect, organization or denomination...And no such particular creed or tenets shall be read or taught in any school or institution supported...by such revenue...[6]

The *McCollum* Court explained that the Blaine Amendment, as well as five similar ones attempting to join the Fourteenth Amendment to the Establishment Clause, were ***voted down*** by that Congress:

The reason for the failure of these attempts seems to

5. *Walz v. Tax Commission*, 397 U.S. 664, 702, 703 (1970).
6. *McCollum v. Board of Education*, 333 U.S. 203, 218, 219 (1948).

have been in part that the "provisions of the State constitutions are in almost all instances adequate on this subject, and no amendment is likely to be secured." *Id.* H. Res. 1, 44th Cong., 1st Sess. (1876). [7]

The Congress which drew the Fourteenth Amendment had rejected ***six*** attempts to make the Establishment Clause apply to the states through the Fourteenth Amendment because "the State constitutions are in almost all instances adequate on this subject." Following the legislative intent of that Congress, no previous Court had applied the Fourteenth Amendment to the Establishment Clause until the *Everson* Court.

Even in the years immediately following the *Everson* decision, this Court did not abandon the longstanding practice of commingling religious activities with education. Rulings after *Everson* (e.g., *Zorach)* only narrowly restricted the interface that existed between public education and religious activities. This Court continued to uphold the constitutionality of students receiving religious instruction during the school day. The complete sterilization of public education from Judeo-Christian values and beliefs is something of recent origin.

B. This Court's Decision in *Engel* was a Radical Jurisprudential Aberration

In 1962, this Court radically changed its interpretation of what was to be allowed in the states under the First as made applicable by the Fourteenth Amendment. As this Court noted in *Walz:*

> It was, for example, not until 1962 that...prayers were held to violate the Establishment Clause...[8]

The *Abington* Court acknowledged that its decision was without precedent:

> Finally, in Engel v. Vitale, only last year, these princi-

7. *Id.* at 218.
8. *Walz v. Tax Commission,* 397 U.S. 664, 702 (1970).

> ples were so universally recognized that the Court, *without the citation of a single case*...reaffirmed them. (emphasis added) [9]

Outside observers also noted the new position of the Court toward the relationship between religion and education following the *Engel* decision:

> The significance of the decision regarding this prayer was enormous, for the whole thorny problem of religion in public education *was thus inevitably raised.* (emphasis added) [10]

> *The Court has broken new ground* in a number of fields. Few Supreme Court decisions of recent years have created greater furor than *Engel v. Vitale* (370 U.S. 421)... (emphasis added) [11]

Before the *Engel* decision, this Court had maintained that:

> The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State...Otherwise the state and religion would be aliens to each other--hostile, suspicious, and even unfriendly...[12]

In the twelve month period between June of 1962 and June of 1963, through the *Engel, Abington, and Murray* decisions, this Court effectively removed all religious activities from public schools.

There is now an apparently religion-hostile and religion-unfriendly position taken toward ***any*** exposure to religion in public schools. For example, although acknowledging in

9. *School Dist. of Abington Twp. v. Schempp,* 374 U.S. 203, 220, 221 (1963).
10. L. Cremin, *Yearbook of the World Book Encyclopedia* 38 (1963).
11. Editorial Research Reports, Sept. 28, 1966, at 707-08.
12. *Zorach v. Clauson,* 343 U.S. 306, 312 (1952).

1973 that the Ten Commandments were the basis of laws in the Western World,[13] in 1980 this Court declared it unconstitutional for students to be passively exposed to the basis for those laws while at school.[14] In 1985, this Court declared that it would be ironic if a creche were to be a violation of the Establishment Clause since it was the primary symbol of the holiday declared by Congress to commemorate "...an event acknowledged in the Western World for 20 centuries, and in this country by the people, the Executive Branch, Congress, and the courts for 2 centuries."[15] This Court thus concluded that "To forbid the use of this one passive symbol...would be an overreaction contrary to this Nation's history..."[16] Yet, this year the Court completed the irony it previously decried by declaring stand-alone displays of the creche, commemorating the purpose for which the national holiday was established, to be unconstitutional unless used in conjunction with other related displays. That position is comparable to requiring that any display depicting Dr. Martin Luther King on the holiday commemorating his remembrance must also include a burning cross and a Confederate flag in order to be constitutional. Although such a position is unthinkable in a civil area, the same logic appears to be completely acceptable if applied to a religious issue.

C. Lower Courts Have Rendered Increasingly Irrational Decisions Because of this Aberration

As a result of confusing standards applied by this Court toward religious expressions in public areas, many lower courts have developed a paranoia over tolerating any appearance of religion in public arenas. For example, lower courts have declared that freedom of speech and press is guaran-

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13. *Anderson v. Salt Lake City Corp*, 475 F. 2d 29, 33 (10th Cir. 1973), *cert. denied*, 414 U.S. 879, see also *Stone v. Graham*, 449 U.S. 39, 45 (1980), Rehnquist dissenting.
14. *Stone v. Graham*, 449 U.S. 39, 42 (1980).
15. *Lynch v. Donnelly*, 465 U.S. 668, 669-70 (1985).
16. *Id.* at 670.

teed to students unless the topic is religious, at which time such speech becomes unconstitutional;[17] if a student prays over his lunch, it is unconstitutional for him to pray aloud;[18] it is unconstitutional for a war memorial to be erected in the shape of a cross;[19] it is unconstitutional for a Board of Education to use or refer to the word "God" in any of its official writings.[20]

Public schools were barred from showing a film about the settlement of Jamestown because the film depicted the erection of a cross at the settlement, despite the historical fact that a cross *was* erected at the Jamestown settlement;[21] in the Alaska public schools, students were told they could not use the word "Christmas" in school because it had the word "Christ" in it, nor could they have the word in their notebooks, nor exchange Christmas cards or presents, nor display anything with the word "Christmas" on it;[22] in 1987, a 185-year-old symbol of a Nevada city had to be changed because of its "religious significance" and a fire station was forced to remove a cross placed in remembrance of a fellow fireman who lost his life in the line of duty;[23] in Virginia, a federal court has ruled that a homosexual newspaper may be distributed on a high school campus, but religious newspapers may not;[24] and in Colorado, a music teacher was stopped from singing traditional Christmas carols in her classes.[25]

Such decisions by lower courts clearly constitute a discrimination on the basis of creed. Following nationwide criticism of such over-reaction by the lower courts, Congress passed the

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17. *Collins v. Chandler Unified School District*, 644 F. 2d 759, *cert. denied*, 454 U.S. 863, (1981); *Stein v. Oshinsky*, 348 F. 2d 999 (2nd Cir. 1965), *cert. denied*, 382 U.S. 957.
18. *Reed v. Van Hoven*, 237 F. Supp. 48 (W.D. Mich. 1965).
19. *Lowe v. City of Eugene*, 451 P. 2d 117 (S.Ct. Oregon 1969), *cert. denied*, 434 U.S. 876.
20. *State of Ohio v. Whisner*, 47 Ohio St. 2d 181, 351 N.E. 2d 750 (1976).
21. J. Eidsmoe, *Christianity and the Constitution* 406 (1987).
22. Murray, *"America Without God,"* The New American, June 20, 1988, at 19.
23. T. LaHaye, *Faith of Our Founding Fathers* 27 (1987).
24. Murray, *supra* note 22, at 19.
25. *Parent Silences Teaching of Carols,"* Wash. Times, Dec. 12, 1988.

Equal Access Act of 1984 in order to eliminate this hostility toward religion and to guarantee to religious groups the same access to school facilities that was extended to others.

In 1987, the *Harvard Journal on Legislation* reviewed the progress of the Equal Access Act through the lower Courts. At that time, because of the paranoia over allowing religious expressions in public arenas:

> All four courts of appeals which have ruled on the issue held that granting equal access violated the Establishment Clause. [26]

II. ACCESS BY STUDENTS TO RELIGIOUS PRINCIPLES IS IMPORTANT

A. Early Decisions by This Court Recognized the Importance of Exposure to Religious Principles

It has been widely accepted in this country that exposure to religious principles, such as those available through voluntary Bible Clubs, has a definite positive impact on students, on education, and on society. Previous legal rulings clearly have held that national morality could not exist apart from religious principles.

> We stand equally in need, now as formerly, of all the moral discipline, and of those principles of virtue, which help to bind society together....the morality of the country is deeply engrafted upon Christianity...[we are] people whose manners,..and whose morals have been elevated and inspired...by means of the Christian religion....Though the Constitution has discarded religious establishments...this [constitutional] declaration never meant to withdraw religion in general, and with it

26. Strossen, *"A Constitutional Analysis of the Equal Access Act's Standards Governing Public School Student Religious Meetings,"* 24 Harv. J. Legis. 117, 118 (1987).

> the best sanctions of moral and social obligation...[27]
>
> The morality of the country is deeply engrafted upon Christianity...[28]
>
> The purest principles of morality ***are*** to be taught. Where are they found? Whoever searches for them must go to the source from which a Christian man derives his faith--the Bible. [29]
>
> Christianity has reference to the principles of right and wrong...it is the foundation of those morals and manners upon which our society is formed; it is their basis. Remove this and they would fall...[morality] has grown upon the basis of Christianity. [30]
>
> The morality of the country is deeply engrafted upon Christianity...people whose manners are refined and whose morals have been elevated and inspired with a more enlarged benevolence by means of the Christian religion. [31]
>
> The morality of the country is deeply engrafted on Christianity. [32]
>
> What constitutes the standard of good morals? Is it not Christianity? There certainly is none other...The day of moral virtue in which we live would, in an instant, if that standard were abolished, lapse into the dark and murky night of...immorality. [33]
>
> Whatever may be conceded to the influence of refined

27. *People v. Ruggles*, 8 Johns 470, 546 (1811).
28. *Church of the Holy Trinity v. U.S.*, 143 U.S. 457, 471 (1892).
29. *Vidal v. Girard's Executors*, 43 U.S. 127, 153 (1844).
30. *City of Charleston v. S.A. Benjamin*, 2 Strob. 508, 520 (1846).
31. *People v. Ruggles*, 8 Johns 470, 546 (1811).
32. *Updegraph v. The Commonwealth*, 11 Serg. & R. 393, 404 (1824).
33. *City of Charleston v. S.A. Benjamin*, 2 Strob. 508, 523 (1846).

education...reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle. [34]

By prohibiting students access to religious principles while at school, the Court has prohibited them access to principles which produce morality along traditional standards. School is where students receive the greatest pressure to ignore previously accepted societal norms; school is where students should receive the greatest access to the support to combat those pressures. This Court's former position on encouraging traditional morality was clear:

> There have been sects which...advocated promiscuous intercourse of the sexes as prompted by the passions of its members...Should a sect of [this] kind ever find its way into this country, swift punishment would follow the carrying into effect of its doctrines, and no heed would be given to the pretence that...their supporters could be protected in their exercise by the Constitution of the United States. [35]

B. This Court's Decisions Currently Protect Religious Teachings Which Foster Immorality but Restrict Student Access to Religious Teachings Which Foster Traditional Morality

Sects "advocating promiscuous intercourse of the sexes" now operate in public education under the Court's "constitutional" protection. Such teachings were previously termed by the Court to be sectarian teachings--religious teachings. Even those associated with groups like *Planned Parenthood*

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34. George Washington's Farewell Address, quoted from W.D. Lewis, *Washington's Farewell Address and Webster's First Bunker Hill Oration* 23-24 (1910); J. Finley & J. Sullivan, *American Democracy from Washington to Wilson* 14 (1919); G. Knight & R. Hardwood-Staderman, *What You Don't Know About George Washington* 59-60 (1941); and numerous others.

35. *Davis v. Beason*, 133 U.S. 333, 343 (1890).

acknowledge their teachings on sex are religious teachings.[36] While permitting these "religious" teachings which advocate promiscuous intercourse of the sexes, this Court has not protected students' access to the traditional religious teachings long held to be the source of the strong morality which previously characterized this nation.

Publications are now provided to students at schools by groups like *Planned Parenthood*, complete with photographs, illustrations, and graphics showing how to easily accomplish "promiscuous intercourse of the sexes." No less than 60 percent of American public school students report that they have had a "comprehensive" sex education program which promotes sexual activity.[37] Consider these "mild" excerpts from books and materials that *Planned Parenthood* recommends for adolescents:[38]

Boys and Sex

> More and more people are coming to understand that having sex is a joyful and enriching experience at any age. (p. 2)
>
> Playing with girls sexually before adolescence... increases the chances for a satisfactory sex life when a boy grows up. (p. 38)
>
> Premarital intercourse does have its definite values as a training ground for marriage...boys and girls who start having intercourse when they're adolescents...will find that it's a big help...it's like taking a car out on a test run before you buy it. (p. 117)
>
> Premarital intercourse among adolescents is often helpful in later life because it's easier to learn things in our earlier years. (p. 118)
>
> When people want to get close to each other, intercourse is the closest they can get. (p. 129)

Girls and Sex:

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36. Slater, *"Abortion Stand Gives Planned Parenthood New Goals, New Foes,"* Wall S. J., June 25, 1988.

37. U. S. Dept. of Educ., review of the 1986 *Planned Parenthood Poll* by Louis Harris and Associates, Inc., Dec. 1, 1987, at 2.

38. Hon. B. Bradley (Cal.-76 Dist.), informational packet excerpting books recommended by Planned Parenthood, Jan. 15, 1987.

Girls understand now that they are far more likely to make good social and sexual adjustments to life if they learn to be warm, open, responsive, and sexually unafraid. They're learning to be sexual partners of men... (p. 10-11)

Everyone's agreed...that teenage sex should be a learning experience...(p. 15)

Sex play with boys...can be exciting, pleasurable, and even worthwhile...it will help later sexual adjustment. (p. 48)

For those who plan on marriage eventually, early intercourse can also be a training ground. (p. 95)

Another reason for intercourse is the fact that...it's a means of learning how to live with people. (p. 96)

You've Changed the Combination:

There are only two basic kinds of sex: sex with victims and sex without. Sex with victims is always wrong. Sex without is always right (p. 10).

One way to avoid having victims is, of course, to have sexual relationships only with your friends (p. 12).

These groups provide publications to students which even encourage types of sexual activity and sodomy that are illegal in many states today (e.g., anal sex, oral intercourse, and tri-partner sex [39]). The effect that groups like *Planned Parenthood* have had on the nation in recent years (under this Court's protection) is apparent:

Two-thirds of America's 11 million teenage boys say they have had sex with a girl...By the time they are 18, on the average, boys have had sex with five girls. [40]

Most boys had their first sexual experience at 14 and

39. *Id.* Referenced from the books *Changing Bodies, Changing Lives* and *Our Bodies, Ourselves.*

40. Parade Magazine, Dec. 18, 1988. *See also* Hellmich, *"Teens Having Sex By 16,"* USA Today, Sept. 22-24, 1989, at 1A.

girls at age 15. [41]

Two-thirds of students surveyed (ages 12-15) felt rape was acceptable if a boy had been dating a girl for as long as 6-12 months and one-fourth felt rape was permissible if he had spent $10 to $15 on her on a date. [42]

Of those students who are sexually active, 65 percent had gone through a comprehensive sex education program. That sexual activity rate is almost twice the sexual activity level of those who have not completed a sex education curriculum. Additionally, 42 percent of those who have never been in a comprehensive sex education class which promotes "promiscuous intercourse of the sexes" have not had sexual intercourse. [43]

The contemporary Court is a party to the decline of America's morality. It has upheld the "rights" of groups to propagate teachings on immorality and has prohibited students' exposure to Biblical teachings on morality.

Did this Court's removal of religious principles from public schools have any tangible effect on student behavior? There is an unusually strong correlation which suggests those decisions to restrict student access to religious principles have had substantial social impact, as indicated by the following charts.

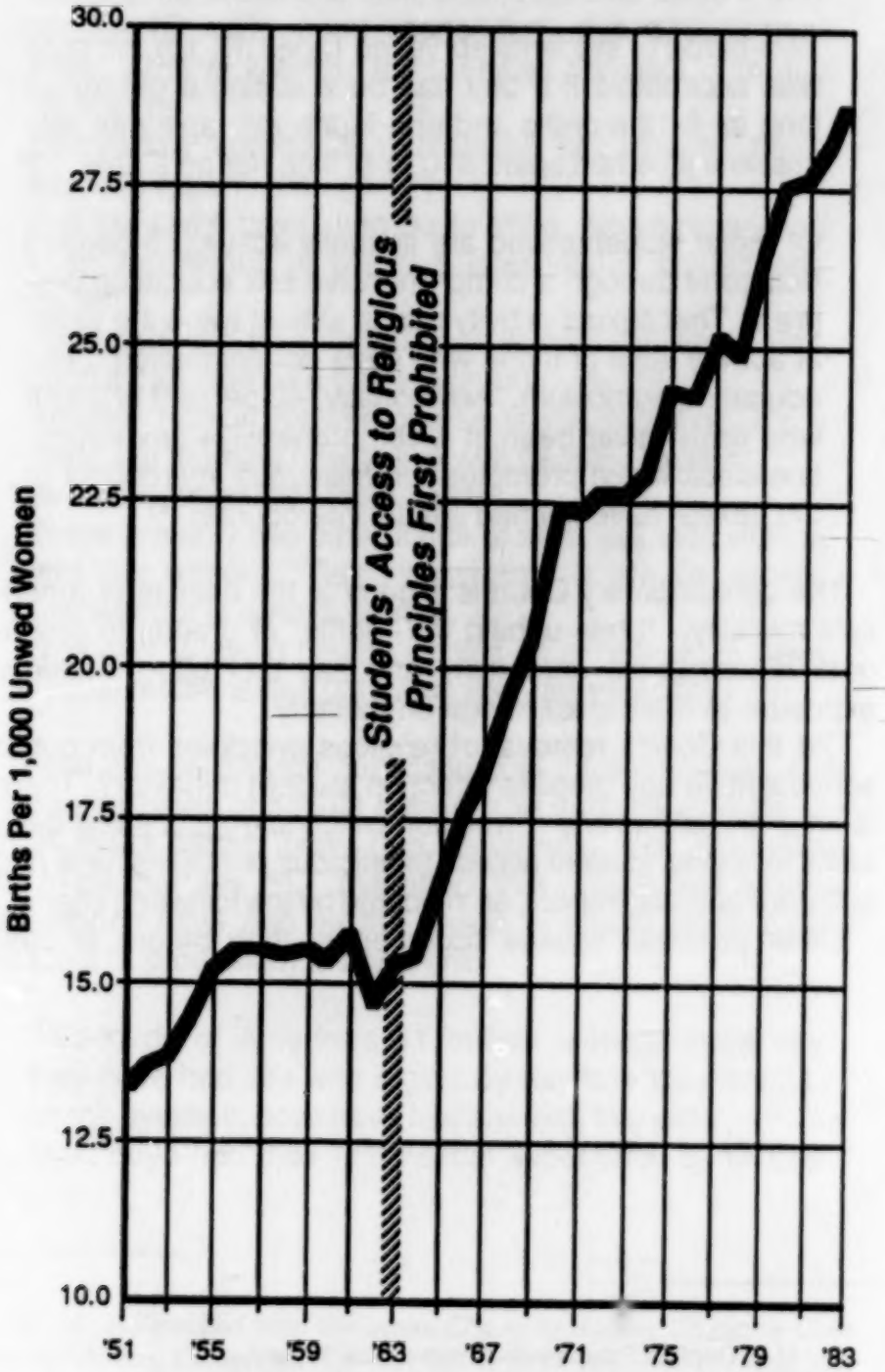
Other potential causes occur either long before or long

41. U.S. Dept. of Educ. review, *supra* note 37, at 2.

42. Study by Rhode Island Rape Crisis Center, released through *Providence Journal-Bulletin*, May 1, 1988.

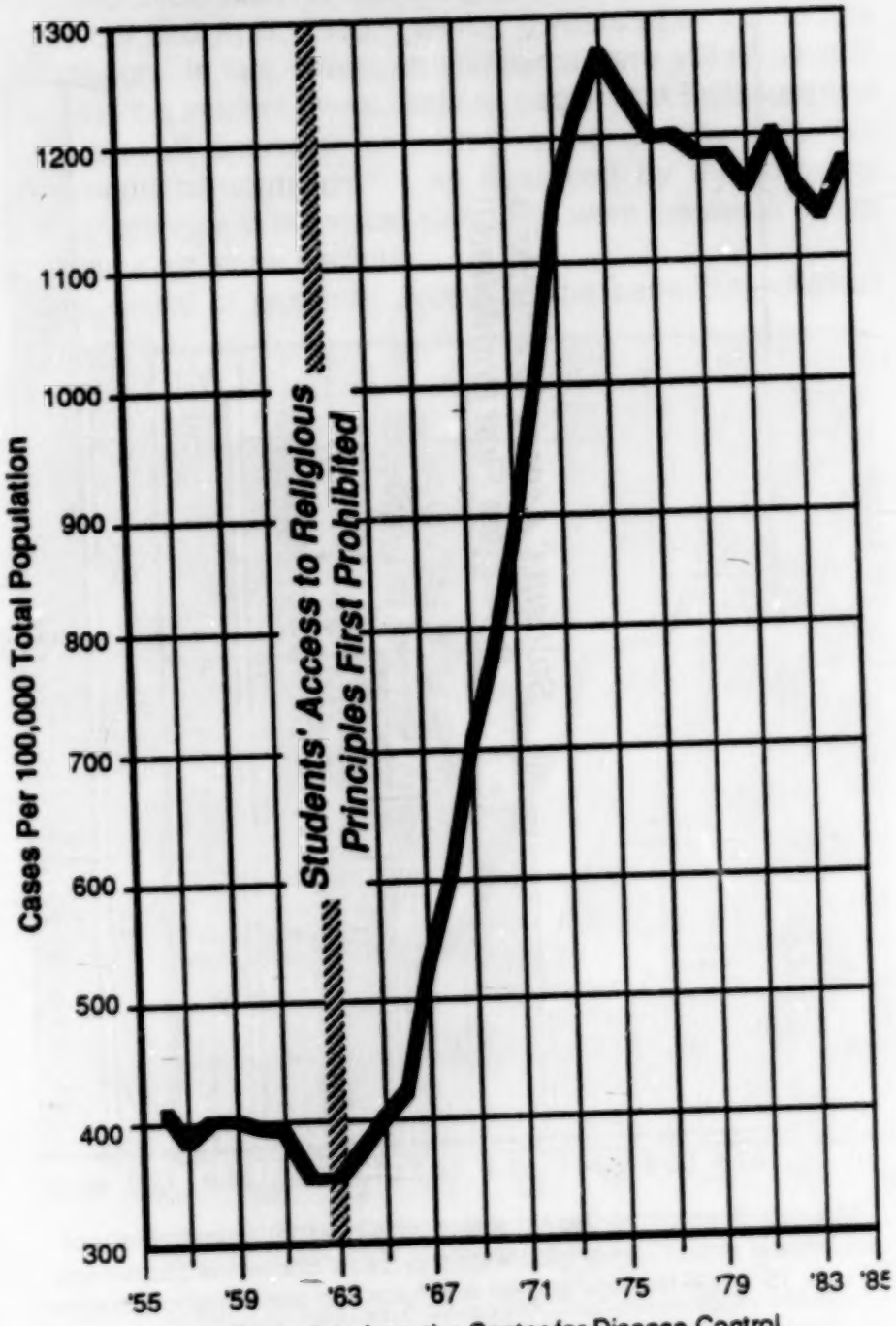
43. U.S. Dept. of Educ. review, *supra* note 37, at 3.

Births For Unwed Girls Ages 15-19



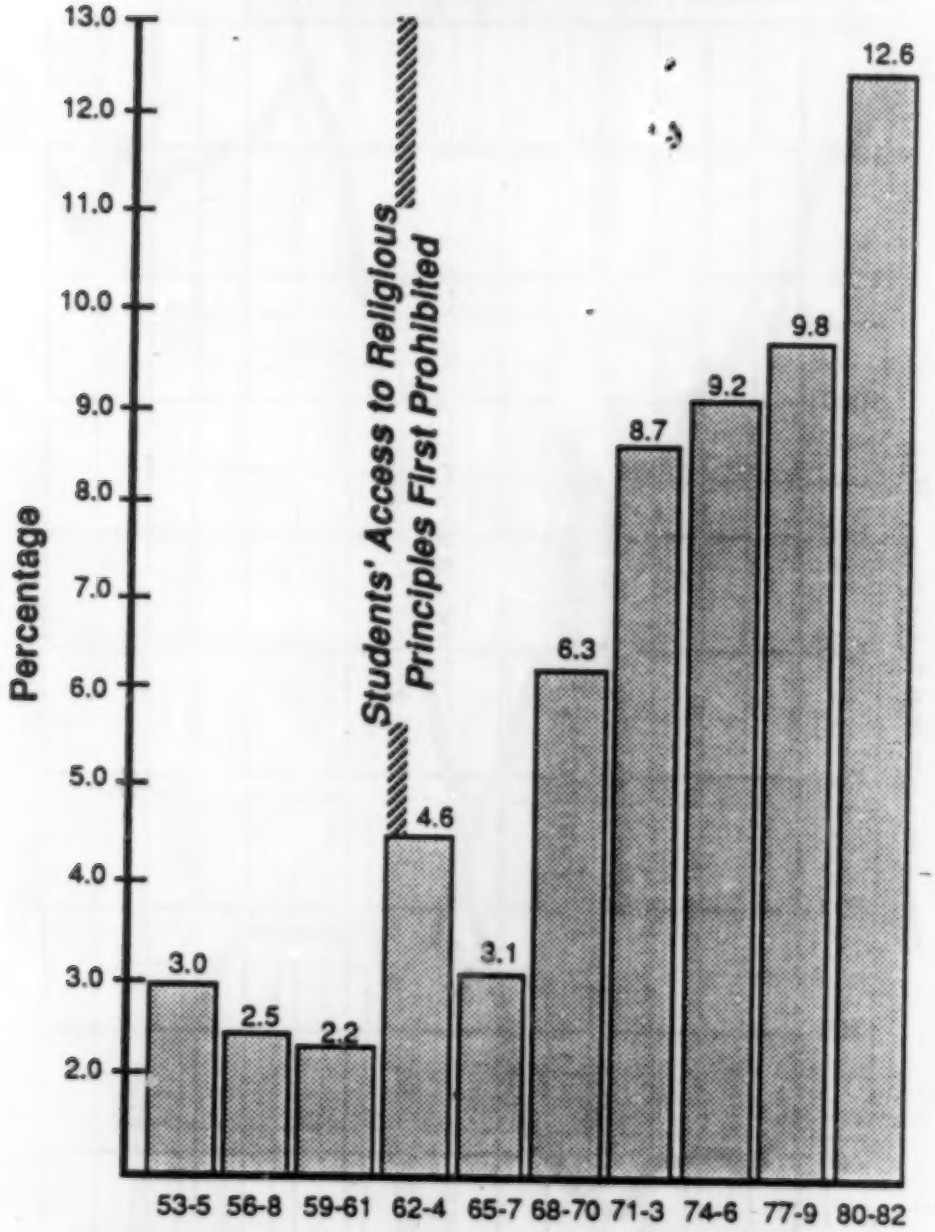
Basic data from Department of Health and Human Services, *Statistical Abstracts of the United States.*

Sexually Transmitted Diseases Gonorrhea: Age Group 15-19



Basic data from the Center for Disease Control, Department of Health and Human Services.

Premarital Sexual Activity Among Students Age 15

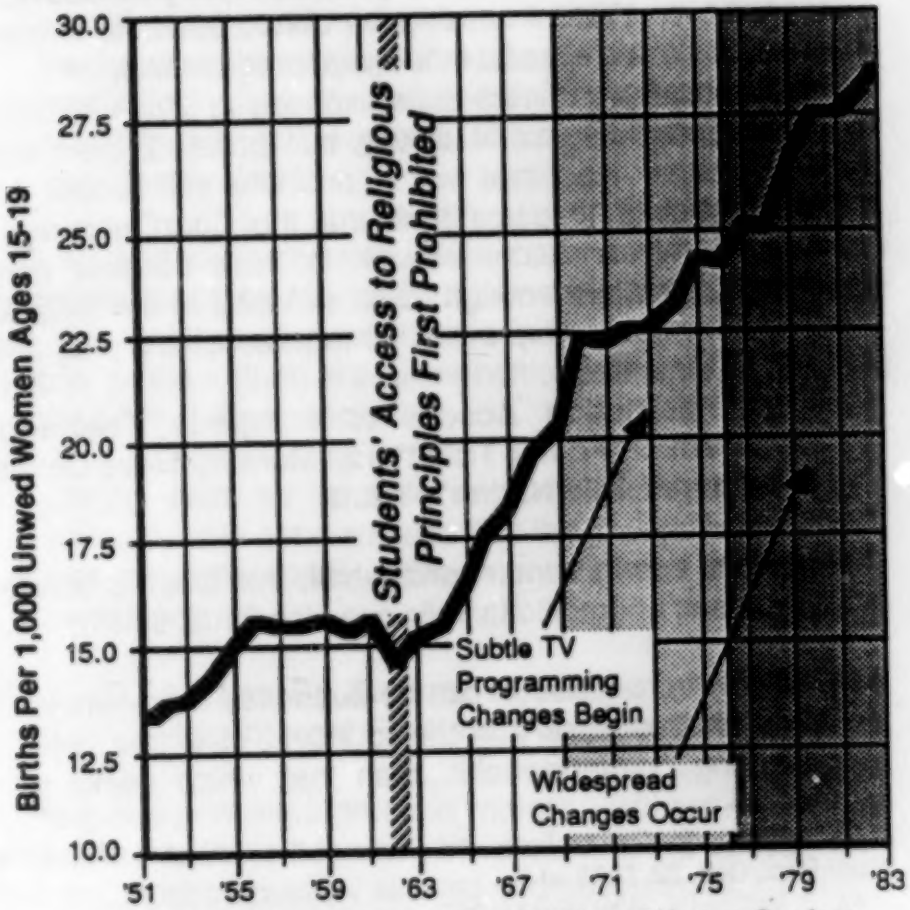


* The year in which the subject age group turned 15. Information was available in three (3) year groupings only.Table Shows the percentage of U.S. 15 yr. old teenage women who have had premarital intercourse.

Basic data from Family Planning Perspectives, Vol. 19, No. 2, March/April 1985. Furnished by Alan Guttmacher Institute.

after the declines in student morality began. For example, television must be ruled out as the cause for students' moral changes since the first loosening of television standards did not occur until April, 1969,[44] almost 6 years ***after*** the decline had begun. In fact, television standards were still so strict at the time the student moral declines began that 5 stations lost their seal of approval for merely airing commercials that mentioned hemorrhoids.[45] As illustrated by the following graph, changes in television standards were the result of, not the cause for moral declines.

The denial of students' access to the beneficial religious



Basic data from Department of Health and Human Services, *Statistical Abstracts of the United States.*

44. D. Barton, *Did Television Cause the Changes in Youth Morality?* 14-15 (1988).

45. *Id.* at 6.

principles long recognized as the source of morality has had definite impact. Now, over 1 million adolescent girls become pregnant each year[46] and 50 percent of sexually active males have had their first sexual experience between the ages of 11 and 13,[47] the very age in their life when they are not permitted any access at school, even voluntarily, to the basic religious principles which produce morality. Since this Court excluded Judeo-Christian principles from students, premarital sexual activity among 15 year old students has increased almost 500%; sexually transmitted diseases (i.e., gonorrhea) have increased over 200%; and teenage student pregnancies have increased over 400%,[48] causing the United States to become the Western World's leader in teenage pregnancies. [49]

The Court allows minors to be exposed to religious teachings which promote sexual activity, but "protects" them from Judeo-Christian teachings which promote self-control and internal restraints. It seems ironic that this Court feels that a "competent minor mature enough to have become pregnant"[50] is not mature enough to be exposed to the religious views which would help prevent her from becoming pregnant.

C. Restricting Access to Religious Teachings Which Foster Traditional Morality Have Devastated This Nation's Youth

For more than a century-and-a-half, this Court protected morality based on traditional religious standards, stating:

> Certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth...than that which seeks to

46. McBee, *"A Call to Tame the Genie of Teen Sex,"* U.S. News & World Rep., Dec. 22, 1986, at 8.
47. J. McDowell, *Why Wait?* (1987).
48. Percentages calculated from raw data obtained from Department of Health and Human Services and Center for Disease Control.
49. Family Planning Perspectives, *"Teenage Pregnancy in Developed Countries,"* Vol. 17, No. 2, Alan Guttmacher Institute, (March/April 1985).
50. *Planned Parenthood of Missouri v. Danforth,* 428 U.S. 52, 75 (1975).

> establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; [the family is] the sure foundation of all that is stable and noble in our civilization; the best guarantee of that reverent morality which is the source of all beneficent progress in social and political improvement... [51]

And only last year reiterating:

> [W]hen, as Congress found, "prevention of adolescent sexual activity and adolescent pregnancy depends primarily upon developing strong family values and close family ties"...it seems sensible for Congress to recognize that religious organizations can influence values and...family life. [52]

The Court correctly noted that matters like "the harm of premarital sex and the reasons for choosing adoption over abortion," matters of great concern to government and society, are "matters [that] are fundamental elements of religious doctrine." [53] It then concluded:

> On an issue as sensitive and important as teenage sexuality, it is not surprising that the government's secular concerns would...coincide... with those of religious institutions. [54]

D. Access By Student to Teachings Which Provide Internal Restraints Is Important

Religious principles produce morality, without which government could not survive. Morality, which proceeds from religion, must be publicly allowed and encouraged.

Civil laws only address externalized crimes; only religious

51. *Murphy v. Ramsey,* 144 U.S. 15, 45 (1885).
52. *Bowen v. Kendrick,* 108 S.Ct. 2562, 2573 (1988).
53. *Id.,* at 2576.
54. *Id.,* at 2576.

principles can address crimes while they are still internalized. In the case of murder, religion deals with it before it occurs; civil laws do nothing until after the fact. Civil laws cannot deal with the heart, which is the actual source of immorality, violence, crime, drug abuse, etc. Thomas Jefferson clearly articulated the same principle:

> The precepts of philosophy, and of the [old legal] code, laid hold of actions only. [Jesus] pushed his scrutinies into the heart of man, erected his tribunal in the region of his thoughts...[55]

Man must either be controlled by the internal restraints provided through religion, or he will be controlled by the threat of force and punishment from a civil authority:

> There are two powers only which are sufficient to control men and secure the rights of individuals and a peaceable administration; these are the combined force of religion and law, and the force or fear of the bayonet. [56]

> Men, in a word, must necessarily be controlled either by a power within them, or by a power without them; either by the Word of God, or by the strong arm of man; either by the Bible or by the bayonet. [57]

The internal restraints provided by religion are preferable to the external restraints which always occur too late:

> It is much easier to introduce and establish an effectual

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55. W. Linn, *The Life of Thomas Jefferson* 265 (1834). See also J. Eidsmoe, *supra* note 21, at 230.

56. Noah Webster, quoted in S. McDowell & M. Beliles, *Principles for the Reformation of Nations* Appendix (1988). Taken from Preface to the *Holy Bible containing the Old and New Testaments, in the Common Version*, with Amendments o' the Language, by Noah Webster, LL.D. New Haven, 1833.

57. Richard Winthrop in 1852, quoted in S. Dawson, *God's Providence in America's History* 5:4 (1988).

> system for preserving morals than to correct by penal statutes the ill effects of a bad system... [58]

E. Access by Students to Voluntary Bible and Religious Clubs is Important

The right for the Bible to be seen or used in all public institutions, particularly through voluntary Bible clubs, must be allowed not only as a part of true academic freedom, but out of consideration for the Country:

> It is impossible to enslave mentally or socially a Bible-reading people. The principles of the Bible are the groundwork of human freedom. *Horace Greely* [59]

> But for [the Bible] we could not know right from wrong. All things most desirable for man's welfare...are to be found portrayed in it. *Abraham Lincoln* [60]

The access of students to gather and voluntarily include the Bible is a practice which has definite secular value and which is a benefit to the entire society. This philosophy is not only proven by reason, but also by experience. According to a Department of Education report, the students who are the least sexually active as adolescents were those who participated in some type of religious activities.[61] The mere passive presence of a voluntary Bible club requires no substantial entanglement, only the same nominal custodial care requirements as for any non-religious club. The presence of such a group on campus can only benefit the general campus climate and would be consistent with the goals of true academic freedom.

III. THE EQUAL ACCESS ACT PREVENTS HOSTILITY

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58. Noah Webster, quoted in T. LaHaye, *supra* note 23, at 76-77.

59. S. Lacy, *Valley of Decision*8 (1988).

60. C. Macartney, *Lincoln and the Bible* 35 (1949) See also R. Flood, *The Rebirth of America* 37 (1986)

61. U.S. Dept. of Educ. review, *supra* note 37, at 1.

TOWARD RELIGION

A. The Equal Access Act Gives Religion the Same Recognition as Non-Religion

Such a religion-hostile and religion-unfriendly posture has been taken by this nation's courts in recent years that Congress was forced to declare the obvious: equal access is available, and there is no discrimination on the basis of religion or creed. Congress recognized that school is a forum in which an exchange of ideas occurs and that religion plays a substantial role in the operation of our society. Religious activities must not therefore be banned from any intelligent exposure and discussion, particularly when instituted by students who voluntarily join themselves to Bible clubs, prayer clubs, etc. These clubs serve as support and exchange groups for people of like interests, in much the same manner as do chess clubs, rodeo clubs, journalism clubs, etc.; they provide social value. Non-religious clubs had long been allowed, but society and students were being sterilized from the religious principles that had been openly practiced in virtually every community of the nation. After the passage of the Equal Access Act, President Reagan explained how religion would now be given an equal footing with non-religion:

> In 1962, the Supreme Court in the New York prayer case banned the...saying of prayers. In 1963, the Court banned the reading of the Bible in our public schools. From that point on, the courts pushed the meaning of the ruling ever outward, so that now our children are not allowed voluntary prayer. We even had to pass a law--pass a special law in the Congress just a few weeks ago--to allow student prayer groups the same access to school rooms after classes that a Young Marxist Society, for example, would already enjoy with no opposition. [62]

This Court has long articulated the identical principle:

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62. Address by President Reagan, *reprinted in* Forerunner, Magazine, Dec. 1988.

> One of the mandates of the First Amendment is to promote a viable, pluralistic society and to keep government neutral, not only between sects, but also between believers and nonbelievers. [63]
>
> This amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion. [64]
>
> The fullest realization of true religious liberty requires that government...effect no favoritism among sects or between religion and nonreligion...[65]

B. Failure to Uphold the Equal Access Act Will Establish Non-Religion as Dominant Over Religion

If this Court fails to uphold the Equal Access Act, it will have established non-religion over religion, having allowed 30 non-religious activities in the Westside schools to be voluntarily participated in by students, but prohibiting one solitary religious activity to be joined in by willing, desirous students. If the presence of such a club on campus constitutes a government endorsement of religion, then the absence of such clubs constitutes a government endorsement of non-religion.

Failure to uphold the right for the existence of this club, and others like it, will be construed as nothing but a repudiation of the principle articulated in *Zorach:*

> When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public

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63. *Walz v. Tax Commission,* 397 U.S. 664, 716 (1970).
64. *Epperson v. Arkansas,* 393 U.S. 97, 97 (1968).
65. *Walz v. Tax Commission,* 397 U.S. 664, 695 (1970).

service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe...we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence....We cannot read into the Bill of Rights such a philosophy of hostility to religion. [66]

C. Failure To Uphold the Equal Access Act Makes Students "Mere Creatures of the State"

To overturn the Equal Access Act will be to force students, because of compulsory attendance laws, into an educational system with non-religious and anti-religious ideas. Such a system represents the expressions of the religions of atheism and secular humanism, religions already recognized by this Court and by lower courts. [67] The absence of religion is acknowledged to be a religion. If the Court fails to uphold the Equal Access Act, the Court will communicate to students that traditional religion is not important; that it has no place in society; and that it is actually so dangerous that it must be prohibited from social gatherings and public settings. To clone students with that philosophy violates a fundamental principle long held by this Court:

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children...The child is not the mere creature of the state... [68]

IV. CONCLUSION

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66. *Zorach v. Clauson*, 343 U.S. 306, 313, 314, 315 (1952).

67. *Torcaso v. Watkins*, 367 U.S. 488 (1963) (Secular Humanism recognized as a religion); *Grove v. Mead School District*, 753 F. 2d 1528 (9th Cir. 1985) (Secular Humanism reaffirmed as a religion); *Theriault v. Silber*, 547 F. 2d 1279 (5th Cir.) (atheism recognized as a religion for First Amendment purposes), *cert. denied*, 440 U.S. 917 (1977).

68. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

This Court's decisions prohibiting student access to religious teachings which foster traditional morality have been both a radical departure from its previous jurisprudence and a significant contributor to the grave plight in which America's youth now exist. The Equal Access Act once again places religion on equal footing with non-religion and reopens an avenue of access to important principles and teachings. Voluntary access to Bible and religious clubs does not violate the Establishment Clause, but is an important part of the fundamental freedom of religious exercise. Therefore, this Court must uphold the Equal Access Act.